



Dawson ENVIRONMENTAL SERVICES, INC.

BEADIE KANAHELE DAWSON, ESQ.

Chief Executive Officer & General Counsel
Dawson International, Inc. and Dawson Environmental Services, Inc.

Summary of Experience

- **Legal** - Native Hawaiian attorney experienced as lead attorney for land and transportation cases including contract, lease, appraisal, title, acquisition, condemnation, construction, and complex commercial litigation.
- **Management** - Started and managed own small business. Co-founder and chairman, Dawson International, Inc., also served as vice president and treasurer for Dawson International, Inc. and its predecessor Canadian Pacific. Chief executive officer and general counsel of Dawson Environmental Services, Inc.
- **Public Relations** - Directed agency, corporate and media communications, research and speech writing. Prepared all annual reports, newsletters and press releases. Provided liaison with press members and all other media personnel.
- **Financial** - Held responsibilities for planning, budgeting and review of all financials, including balance sheets and income statements.

Employment History

Chairman and General Counsel, Dawson International, Inc.	1996 - Present
CEO and General Counsel, Dawson Environmental Services, Inc.	1996 - Present
Deputy Attorney General for State of Hawaii	1982 - 1996
Vice president and legal counsel, Dawson International, Inc.	1982
Public Information Officer, Hawaii State Department of Social Services & Housing	1971-1978
Assistant Public Relations Director, Matson Hotels	1955-1956
President, Keiki Wonderland Tours, Hawaii	1954-1955
Assistant Director, Health Education, YWCA, Hawaii	1951-1953

Education

J.D.	1981, William S. Richardson School of Law
B.A. (Psychology and Education)	1951, Whitman College, Walla Walla, Washington
Graduate	1947, Punahou School

Certifications, Affiliations, and Awards

- Attorney at Law: State of Hawaii, 1982
- U.S. District Court, District of Hawaii, 1982
- 1998 Outstanding Lawyer of the Year
- 1997 Awardee, Annual Salute to Women Leaders
- Legislative Resolution for 1991 Distinguished Woman of the Year for Outstanding Achievement
- American Bar Association: Litigation Division
- Native Hawaiian Bar Association Board
- Historic Hawaii Foundation Board Trustee
- Hawaiian Historical Society Board
- Friends of Iolani Palace Board; Chair, Palace Galleries Development
- Phi Delta Phi
- Christian Legal Society
- Hawaii State Bar Association: Real Property and Financial Services Section; Nominating and Convention Committees
- Hawaii Women Lawyers Foundation
- Aha Hui O'Hawaii

- Queen Liliuokalani Children's Center Advisory Council Chair
- William S. Richardson School of Law Alumni Association
- Friends of the Medical School Board
- Mid Pacific Institute, Board of Counselors
- YWCA Board, Land Development Chair
- Legal Counsel, Na Pua a Ke Ali'i Pauahi
- Department of Education, Cyberspace Entrepreneurs Board.

- *Task Force: Native Hawaiian Healthcare*
- *Paepae Hanohano, Native Hawaiian Consensus Building*

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**VII. The Seth Waxman Brief: The Justice
Department Speaks to the Supreme
Court in Support of OHA and the
Hawaiian People
By Beadie Dawson**

**The Justice Department Speaks to the Supreme Court
in Support of OHA and the Hawaiian People**

THE SETH WAXMAN BRIEF

In July of this year, the Department of Justice, through its Solicitor General, Seth P. Waxman, filed with the Supreme Court, a Brief for the United States. It was a surprising departure from prior uncertain or hostile positions taken by the federal government. In some cases they actually denied any U.S. trust responsibility to Native Hawaiians. Now, the tide has changed. The Justice Department has given its strong support of OHA's voting limitations, at issue in the Rice v. Cayetano appeal.

In the Rice case, Petitioner, a non-Hawaiian, apparently looking for notoriety, complained that only Hawaiians were allowed to vote for OHA Trustees.

This case is reminiscent of the 1893 overthrow of the Kingdom of Hawaii by non-Hawaiians who were trying to gain control of Hawaii from Native Hawaiians.

The issues then, were eerily similar to now. In 1893, low income and non-property owning Hawaiians were prohibited from voting under the "Bayonet Constitution" and Queen Liliuokalani was attempting to change that Constitution to restore to all Hawaiians the right to vote.

The Waxman Brief not only provides powerful support to OHA's voting limitations being questioned in the Rice appeal, but it is also very important to Hawaiians for the Reconciliation Hearings in December. There are three reasons, which follow:

First, the Waxman Brief establishes a record in the highest court of the United States. Waxman recites the full array of Congressional actions, federal laws and court rulings articulating and supporting Congressional findings about Native Hawaiians. For example:

- * Hawaiians are the indigenous people in Hawaii.

- * Hawaiians have a unique political status with the federal government.
- * The U.S. has a trust responsibility to the Hawaiian people.

Second, as Solicitor General, Waxman speaks to the U.S. Supreme Court on behalf of the United States of America.

Third, Waxman fully lays out Hawaii's historic facts and events before the Supreme Court. (Note: Comments made by some Justices during the October 6th oral arguments of the Rice case, seem to reveal their appalling lack of knowledge and understanding of the truth about Hawaii's past and the role that the U.S. played in the destruction of a peaceful Hawaiian nation.)

SUMMARY OF IMPORTANT POINTS FROM THE WAXMAN BRIEF

Waxman begins with the following:

"The United States has a special responsibility for the welfare of the Native peoples of the United States, including Native Hawaiians. Pursuant to that responsibility, Congress has enacted many statutes for the benefit of Native Hawaiians. Congress has also delegated broad authority to administer a portion of the federal trust responsibility to the State of Hawaii, which (has) enacted the voting provision at issue here in carrying out that responsibility."

The Waxman Brief argues that if a federal law that fulfills the government's unique responsibility to Indians, it does not discriminate on the basis of race.

The Waxman Brief argues that if a federal law that fulfills the government's unique responsibility to Indians, it does not discriminate on the basis of race.

The Waxman Brief then argues that Congress has rationally identified Native Hawaiians as a group falling within the Congress's Indian Affairs powers.

Finally the Waxman Brief argues that Hawaii's voting requirement is authorized by federal law and it is rationally tied to the fulfillment of the U.S.'s obligation to indigenous Hawaiians.

The arguments in the Waxman Brief will be convincing to the Court, but win or lose, they will be convincing arguments for Native Hawaiians to make in the Reconciliation Hearings and in our drive for self-determination and sovereignty.

The following are some of the important points to remember from the Waxman Brief.

Basis for OHA's Voting Limitation

- * OHA's voting law is based on the status of Hawaiians as an indigenous people of a once sovereign nation, with a unique trust relationship to the United States. That law is not based on race. The Constitutional test is whether the voting law is rationally tied to the fulfillment of the United State's unique trust responsibility toward an indigenous people to whom it has a trust responsibility. The OHA voting law satisfies that standard.
- * Federal laws which fulfill the government's unique responsibility toward Indians, do not discriminate on the basis of race. The Constitution allocates to Congress plenary (full) power over Indian affairs. The term "Indian" in the Constitution refers to the indigenous people who inhabited the New World before the arrival of the first Europeans.

The Plenary Powers of the Congress

- * The plenary powers of the Congress over "Indian" affairs includes the broad authority to identify the communities that fall within that power.

- * Congress's authority to aid Indian communities extends to all such communities within the borders of the U.S., whether they are within its original territory or a territory subsequently acquired.
- * Thus, Native people in the east, the Plains, the Southwest, the Northwest and in Alaska, all fall within Congress's Indian Affairs power; regardless of differences in language, culture, religion, race and community structure.
- * The Morton v. Mancari ruling in 1974 holds that distinctions based on the United States' unique trust relationship with indigenous people should not be equated with distinctions based on race that are prohibited by the Constitution. (Note: In the Mancari case the Bureau of Indian Affairs was sued because of its policy of giving preference to Indians persons as a hiring practice.) Since Mancari, the court has repeatedly affirmed that governance of once-sovereign political communities is not to be confused with legislation of a racial nature.
- * Congress has long ago identified Native Hawaiians as an indigenous group falling within its Indian Affairs power, starting with its enactment of the Hawaiian Homes Commission Act in 1920.
- * Waxman cites many federal statutes including the Native Hawaiian Healthcare Act of 1992 as reflecting the view of Congress that the authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the U.S., includes the authority to legislate in matters affecting the native people of Hawaii.

Findings by Congress

- * Multiple federal laws, including the "Apology Bill", reflect the findings of Congress:

- 1) Native Hawaiians are a distinct and unique indigenous people with a historical continuity to the original inhabitants;
- 2) Native Hawaiians exercised sovereign powers over the Hawaiian Islands;
- 3) The overthrow of the Kingdom of Hawaii was "illegal" and deprived Native Hawaiians of their rights to self-determination;
- 4) After the overthrow, the government ceded 1.8 million acres of land to the U.S. "without the consent of or compensation to the Native Hawaiian people or with their sovereign government";
- 5) The indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the U.S.;
- 6) The Native Hawaiian people are determined to persevere, develop and transmit to future generations their ancestral territory and their cultural identity.

Tribal Government Not Necessary for Congressional Enactments

- * Because Congress has repeatedly recognized Native Hawaiians as an indigenous group within the Indian affairs power, the existence of a "tribal" government recognized by the Department of the Interior is not a necessary predicate for Congress to exercise its unique power to fulfill the Nation's obligation toward indigenous people.
- * The United States has concluded that it has a trust obligation to indigenous Hawaiians because it bears a responsibility for the destruction of their government and the unconsented and uncompensated taking of their lands.
- * The Congress may fulfill its trust responsibilities to indigenous peoples, whether or not they currently have a tribal government as such.

Indian Tribes

- * When the Constitution was adopted, the term "tribe" meant a "distinct body of people whether divided by family or fortune or any other characteristic".
- * Thus, to the framers of the Constitution, an Indian tribe simply meant a distinct group of indigenous people set apart by their common circumstances.

Special Legislation

- * The Constitution does not limit the Indian Affairs powers of Congress to groups with a particular government structure, nor does it limit its power to groups that continue to exercise all aspects of sovereignty. Thus, under the Constitution, federal regulation of Indian tribes is governance of once-sovereign, political communities.
- * The plenary power of the Congress to manage Indian affairs more generally does not disintegrate when an indigenous people loses its government, particularly when the United States bears a responsibility for that loss.
- * It is especially at the point at which indigenous people have been deprived of their land and the ability to govern themselves, that the United States acquires a **heightened trust responsibility** to the indigenous people and their remaining institutions.

Can Hawaiians Be An Indian Tribe?

- * Because Congress found that Hawaiians have a direct historic, cultural and land-based link to the indigenous people who inhabited and exercised sovereignty over the Hawaiian Islands before European contact in 1778, and because Hawaiians are determined to persevere and pass on to future generations their native lands and their distinct culture, Congress

could reasonably determine that indigenous Hawaiians constitute an "Indian Tribe". (Note: Such a determination could be made on the basis of applying the existing laws and constitution to the Hawaii people. It does not transform Hawaiians into an Indian tribe or make them "Indians".)

- * After the Mancari case, the Court confirmed that a federally recognized tribal government is not a predicate for legislation on behalf of indigenous people.

Why Similar Benefits Do Not Exist For Others

- * Those who came to Hawaii after 1778 have no aboriginal claim to sovereignty or land. The distinction between indigenous people and subsequent inhabitants has been uniformly respected in federal law. For example, benefits were conferred on Indians, but not on French settlers in Louisiana, and obligations of the United States were extended to Native Alaskans but not to inhabitants of Russian and other descent.
- * In annexing Hawaii, Congress recognized its trust obligations to Native Hawaiians, but not to the non-indigenous inhabitants of Hawaii.

Citizenship

- * Citizenship is not incompatible with tribal existence or continuing guardianship. Citizenship may be conferred without placing the conferee beyond the reach of Congressional regulations adopted for their protection.

Congress May Delegate Authority to a State

- * As a general rule, States do not enjoy the same unique relationship with Indians as the federal government. However, when Congress delegates authority to a State to administer the federal trust responsibility to

indigenous people, State legislation that is within the scope of that authority is subject to the same constitutional analysis as legislation enacted by Congress. Such delegation to the State of Hawaii took place in the Admission Act.

- * Giving indigenous Hawaiians the right to choose the officials who would operate the trust for their betterment, fits within the wide grant of authority extended by the Admission Act.
- * Hawaii's election law furthers the same self-determination purpose as federally supervised tribal elections. The OHA election law places power and influence in the hands of the Trust beneficiaries as a whole.
- * In numerous legislation, Congress has also reflected its clear approval of OHA's election structure. Because Congress has delegated its trust responsibility to OHA, the OHA election law is subject to the same standard of review as legislation which singles out a distinct indigenous group for favorable treatment.
- * OHA's election law is constitutional as long as it is rationally tied to the fulfillment of Congress's unique trust obligation.
- * **OHA's election law satisfies that standard.**